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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/905,051

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Nobuhiro Igi

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08/12/2004

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EXAMINER

HANEY, MATTHEW J

ART UNIT

PAPER NUMBER

2613

DATE MAILED: 08/12/2004

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/905,051

Applicant(s)

IGI ET AL.

Examiner

Matthew Haney

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 4-9 and 12-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____                                                 |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____                                                              | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Double Patenting***

1. Claims 1, 2, 10, and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,363,114.

Claims 1, 2, 10, and 11 are broader than claim 1 of Kato (US 6,363,114) and if allowed would unduly extend the timewise monopoly already given to the subject matter previously claimed.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Boice (US 5,978,029).

Boice teaches of determining the coding difficulty level of an input video signal for each unit time (Note: Statistics produced for picture complexity, Column 12, Lines 8-18); determining a reference value for allocating coding bits on the basis of temporally b for the amount of coding bits b allocated for each unit time and related in advance to the coding difficulty level d of said input video signal for each unit time (Note: statistics for encoding system 1 are used as reference values for encoding system 2 so that analysis can be done, Column 12, Lines 19-26); determining an actual amount of allocated coding bits on the basis of the reference value and generating coded data by coding the input video signal for each unit time on the basis of said actual amount of allocated coding bits (Note: determine a new set of encoder parameters (i.e. amount of bits to be used), Column 12, Lines 39-47).

***Claim Rejections - 35 USC § 103***

4. Claim 3 is rejected under 35 U.S.C. 103(a) even though Boice does not teach of the memory check mentioned in claim 3, it is considered obvious to one of ordinary skill in the art at the time of the invention to check to see if enough memory is available in order to prevent loss of data, memory overwrite, or an incomplete write function.(Official Notice)

***Allowable Subject Matter***

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5. Claims ~~4~~-9 and 12-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kato (US 6,167,087) teaches of an encoding apparatus with an included difficulty calculating means. Yu (US 5,828,426) teaches of a decoding apparatus that uses a reference value for allocating bits.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew Haney whose telephone number is 703-305-4915. The examiner can normally be reached on M-Th (7-4:30), Every Other Friday Off.

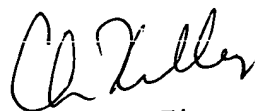
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 703-305-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matthew Haney  
Examiner  
Art Unit 2613

mjh

  
CHRIS KELLEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600